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United States Attorney

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10 Attorneys for Plaintiff United States of America

FILED

JUL 23 2010

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15  
16  
17  
18 UNITED STATES OF AMERICA, ) No. CV10-1923 SLM  
Plaintiff, )  
v. )  
CURTIS E. DIEDRICH, )  
Defendant. )  
\_\_\_\_\_  
19

20  
21 STIPULATION FOR ENTRY OF  
22 CONSENT JUDGMENT

23 Plaintiff, United States of America (“United States”), by and through its attorneys, and  
24 defendant Curtis E. Diedrich (“Diedrich”), appearing in pro per, stipulate and agree as follows:

25 RECITALS

26 A. The United States filed a Complaint in this action, seeking to recover a debt of  
27 approximately \$26,195.48 owing from Diedrich to the Department of Health and Human  
28 Services, on account of a Health Education Assistance Loan;

B. Diedrich has not yet answered the Complaint; and

C. The parties are desirous of resolving their dispute under the terms outlined below.

STIP. FOR ENTRY OF CONSENT JUDGMENT  
ORDER APPROVING STIPULATION  
CV 10-1923 SLM

## **STIPULATION**

## 1. Parties

The parties to this Stipulation for Entry of Consent Judgment are the United States and Diedrich.

**2. Acknowledgment of Service of Complaint**

Diedrich acknowledges receipt of the Complaint, a copy of which is attached as Exhibit A.

### **3. Jurisdiction**

The court has personal jurisdiction over Diedrich. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1335.

**4. Claim for Relief**

The complaint states a claim for relief upon which relief may be granted.

## 5.      Venue

Venue is proper in this District pursuant to 28 U.S.C. § 1395.

## 6. Compromise

The parties agree that this Stipulation for Entry of Consent Judgment constitutes a compromise and settlement of the contentions of the United States asserted in the complaint.

**7. Judgment Amount**

Judgment shall be entered against Diedrich in the amount of \$26,530.76 (consisting of current principal of \$15,252.28, interest through December 17, 2009 of \$10,943.20, and interest from December 18, 2009 to June 9, 2010 (a total of 173 days at \$1.36/day of \$235.28). A form of the Consent Judgment is attached as Exhibit B.

## 8. Periodic Payments

A. To resolve this matter, the United States has agreed to accept monthly payments of \$300 from Diedrich, who has agreed to make those payments using the electronic system PAY.GOV. A summary of the terms of PAY.GOV is attached as Exhibit C. Diedrich will make his first monthly payment no later than July 1, 2010, and each subsequent payment on

1 the first day of each succeeding month. If the first day of the month is a holiday or weekend, the  
2 payment shall be made on the next regular business day. Diedrich shall make this monthly  
3 payment (or any adjusted monthly payment) until the balance due under the Consent Judgment  
4 has been paid in full, including interest at the legal rate.

5           B. Either the United States or Diedrich may make a request of the other party  
6 to increase or reduce the monthly payment provided by this paragraph, should Diedrich's  
7 financial circumstances change. Diedrich agrees to supply a financial statement and tax returns  
8 to the United States Attorney's Office at its request. The United States Attorney's Office will  
9 confirm any change to the monthly payment in writing to Diedrich.

10           9. Interest

11           The unpaid balance due on the Consent Judgment shall accrue interest at the legal rate  
12 provided under 28 U.S.C. § 1961, in effect on the date the Consent Judgment is entered on the  
13 docket in this matter.

14           10. Abstract of Judgment (Lien)

15           Upon entry of the Consent Judgment, the United States may record an abstract of  
16 judgment against Diedrich in any county. The abstract of judgment shall be released by the  
17 United States upon payment of the amount due under the Consent Judgment.

18           11. Stay of Execution

19           The United States shall stay execution on the Consent Judgment for so long as Diedrich is  
20 not in default of the terms of the payments required under paragraph 8, as those payments may be  
21 adjusted from time to time.

22           12. Default

23           A. Defined – Default under this Consent Judgment shall be defined as the  
24 failure to make any monthly payment required by the terms of paragraph 8, as those payments  
25 may be adjusted from time to time, when due or in the required amount.

26           B. Consequences of Default – In the event Diedrich defaults under this  
27 Stipulation for Entry of Consent Judgment, the entire unpaid balance of the Consent Judgment

1 shall be immediately due and payable. The United States shall have the right to immediately  
2 enforce the Consent Judgment by, among other things, executing or garnishing Diedrich's  
3 property, without further notice. In the event of default, Diedrich will pay any costs associated  
4 with the enforcement of the Consent Judgment, including the cost of recording any liens at the  
5 County Recorder's office, and attorney's fees.

6           13.     Retention of Jurisdiction

7           The Court shall retain jurisdiction over this action in order to enforce this Stipulation for  
8 Entry of Consent Judgment.

9           14.     Notices

10          All notices to Diedrich shall be sent to:

11          Curtis Diedrich  
12          38143 Martha Avenue  
13          Fremont, CA 94536

14           15.     Costs and Fees

15          The parties shall bear their own costs, fees, and expenses incurred regarding this action  
16 and regarding the negotiation, drafting, and execution of this Stipulation for Entry of Consent  
17 Judgment.

18           16.     Release

19          Diedrich accepts the terms of this Stipulation for Entry of Consent Judgment as full  
20 settlement and satisfaction of the above-captioned lawsuit and releases and forever discharges the  
21 United States and any and all past and present agencies, officials, employees, agents, attorneys,  
22 their successors and assigns, from any and all obligations, damages, liabilities, actions, causes of  
23 action, claims and demands, of any kind and nature whatsoever, whether suspected or  
24 unsuspected, at law, in equity, known or unknown, arising out of this matter.

25           17.     California Civil Code § 1542 Waiver

26          The provisions of California Civil Code § 1542 are set forth below:

27          A general release does not extend to claims which the creditor does not know or  
28 suspect to exist in his or her favor at the time of executing the release, which if  
known by him or her must have materially affected his or her settlement with the  
debtor.

1  
2 Diedrich, having been apprized of the statutory language of Civil Code Section 1542, and fully  
3 understanding the same, nevertheless elects to waive the benefits of any and all rights Diedrich  
4 may have pursuant to the provision of that statute and any similar provision of federal law.  
5 Diedrich understands that, if the facts are later found to be other than or different from the facts  
6 now believed to be true, the Stipulation for Entry of Consent Judgment shall be and remain  
7 effective notwithstanding such material difference.

8       18.    Complete Agreement & Merger

9           Each party acknowledges that, except as herein expressly set forth, no representations of  
10 any kind or character have been made by the other party or that party's agents, representatives, or  
11 attorneys to induce execution of this Stipulation for Entry of Consent Judgment or delivery of the  
12 documents or payments required by this Stipulation for Entry of Consent Judgment. This  
13 Stipulation for Entry of Consent Judgment represents the full and complete agreement by and  
14 between the parties regarding the subject matter of this Stipulation for Entry of Consent  
15 Judgment. This Stipulation for Entry of Consent Judgment shall not be modified or amended  
16 except in a writing signed by the person or entity against whom enforcement is sought.

17       19.    No Binding Affect on Other Obligations to United States or Its Agencies or  
18 Departments

19           Nothing in this Stipulation for Entry of Consent Judgment is intended to affect or bind,  
20 nor shall it affect or bind, the United States Internal Revenue Service with respect to any liability  
21 that Diedrich has or may have with respect to claims arising under the Internal Revenue Service  
22 Code, Title 26 of the United States Code, or any other United States Government agencies or  
23 departments.

24       20.    Waiver of Trial and Appeal

25           The parties consent to the entry of the foregoing Stipulation for Entry of Consent  
26 Judgment, and defendant Diedrich hereby waives his right to a trial of this action and waives all  
27 rights to appeal this action or the Stipulation for Entry of Consent Judgment.

28

STIP. FOR ENTRY OF CONSENT JUDGMENT  
ORDER APPROVING STIPULATION  
CV 10-1923 SLM

1           **SO STIPULATED:**

2           I/we have read the foregoing, I/we understand the terms, and I/we sign this Stipulation for  
3           Entry of Consent Judgment as a free and voluntary act.

4

5           Dated: 6/15/10



CURTIS E. DIEDRICH  
Defendant

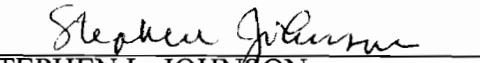
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8           JOSEPH P. RUSSONIELLO  
9           United States Attorney

10          Dated: 7/2/2010

11          By: \_\_\_\_\_



STEPHEN L. JOHNSON  
Assistant U. S. Attorney  
For the United States of America

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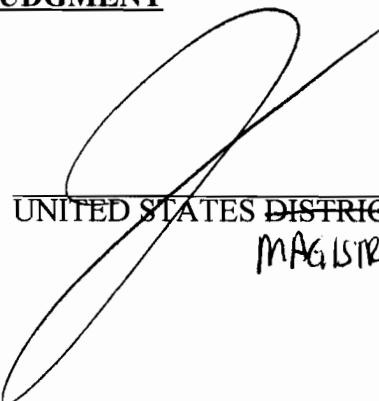
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16          **ORDER APPROVING STIPULATION FOR ENTRY OF STIPULATION FOR ENTRY**  
**OF CONSENT JUDGMENT**

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18          **IT IS SO ORDERED.**

19          DATED: 7/23/10



UNITED STATES DISTRICT JUDGE  
MAGISTRATE

# EXHIBIT A

ORIGINAL  
FILED

2010 MAY -7 A 10:07

RICHARD H. WIEKING  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 JOSEPH P. RUSSONIELLO (CSBN 44332)  
United States Attorney

2 JOANN M. SWANSON (CSBN 88143)  
3 Chief, Civil Division

4 STEPHEN L. JOHNSON (CSBN 145771)  
5 Assistant United States Attorney

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FAX: (415) 436-7169  
stephen.johnson1@usdoj.gov

8 Attorneys for Plaintiff United States of America

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA, ) No. CV10-1923  
14 Plaintiff, )  
15 v. ) **AMENDED COMPLAINT FOR**  
16 CURTIS E. DIEDRICH, ) **COLLECTION OF DEBT**  
17 Defendant. )  
18 \_\_\_\_\_ ) DEBT COLLECTION CASE [L.R. 16-6]

19 Plaintiff, United States of America, alleges in this Amended Complaint<sup>1</sup> as follows:

20 1. This is an action to recover funds lent to defendant Curtis E. Diedrich

21 ("Defendant") under a promissory note dated June 16, 1983, in the original principal amount of  
22 \$6,300, made as a Health Education Assistance Loans (HEAL) under § 701-720 of the Public  
23 Health Service Act (42 U.S.C. 292 f - p), by plaintiff United States of America, Department of  
24 Health and Human Services ("Plaintiff" or "HHS"), which have not been repaid.

25  
26  
27 This complaint is amended to include a copy of the Certificate of Indebtedness,  
28 attached as Exhibit A.

### Jurisdiction

2. This court has jurisdiction over the subject matter of this action pursuant to 28  
U.S.C. §§ 1331 and 1345.

### Venue

3. Defendant resides in Alameda County, which is within the jurisdiction of this Court under 28 U.S.C. §§ 28 and 1391.

## The Debt

4. The debt arises from Defendant's execution of a promissory note dated June 16, 1983, in the original principal amount of \$6,300, which loan he promised to repay at a variable rate of interest beginning the first day of the tenth month after ceasing to be a full-time student or completing a residency program. Thereafter, the Student Loan Marketing Association ("SLMA") purchased the note and received an assignment. On November 21, 1985, SLMA sent a final demand letter to Defendant and advised Defendant his loan would default if it was not paid. On July 31, 1986, HHS paid SLMA's insurance claim, acquiring the promissory note.

## **Failure to Pay**

5. As of December 28, 2009, Defendant owes plaintiff a total of \$26,195.48 (consisting of principal of \$15,252.28, and interest of \$10,943.20), plus interest at an annual rate of 3.25% from that date. *See* Certificate of Indebtedness attached hereto as Exhibit A and made a part hereof.

6. The principal balance and interest shown on the Certificate of Indebtedness is correct as of the date of the Certificate of Indebtedness after application of all prior payments, credits, and offsets.

## Prayer

WHEREFORE, plaintiff prays for judgment against defendant as follows:

A. For the sum of \$26,195.48, plus prejudgment interest through the date of judgment, all administrative costs allowed by law, and post-judgment interest;

B. For Court costs, and attorneys' fees; and,

**AMENDED COMPLAINT**  
Case No. CV 10-1923

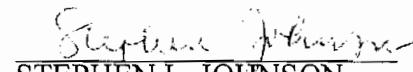
1 C. For such other and further relief as the Court deems just and proper.  
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Respectfully submitted

JOSEPH P. RUSSONIELLO  
United States Attorney

6 Dated: 5/5/2010

7 By:

  
STEPHEN L. JOHNSON  
Assistant U. S. Attorney

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# **EXHIBIT A**



## DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Program Support Center

Rockville MD 20857

CERTIFICATE OF INDEBTEDNESS

Curtis E. Diedrich, DC  
 c/o Agape Chiropractic  
 38143 Martha Ave  
 Fremont, CA 94538  
 Ref: 50029671

Total debt due to the United States of America as of December 17, 2009: \$26,195.48 (principal \$15,252.28, interest \$10,943.20, administrative costs \$0.00).

I certify that the Department of Health and Human Services records show that the debtor named above is indebted to the United States in the amount stated above, plus additional interest on the principal balance of \$15,252.28 from December 17, 2009, at the rate of 3.25%. Interest accrues on the principal amount of this debt at the rate of \$1.36 per day. Interest is computed at a variable rate and is adjusted quarterly. Due to the semi-annual compounding of interest, the current principal amount is greater than the original amount borrowed.

The claim arose in connection with a Government-insured Health Education Assistance Loan (HEAL) made by a private lender and assigned to the United States.

As a student at the Palmer College of Chiropractic - West, you applied for and were granted the following Health Education Assistance Loans (HEAL), Section 701-720 of the Public Health Service Act (42 U.S.C. 292 f-p).

<u>Date of Promissory Note</u>	<u>Amount of Promissory Note</u>	<u>Amount Disbursed</u>
06/16/83	\$6,300.00	\$6,300.00

You signed a promissory note agreeing to repay the loan at a variable rate of interest beginning the first day of the tenth month after ceasing to be a full-time student or completing a residency program. The Student Loan Marketing Association (SLMA) purchased your note and received an assignment.

Upon your leaving the Palmer College of Chiropractic - West, you were granted forbearance agreements during the period of January 1985, to December 1985, with payments to begin January 24, 1986. You did not make any payments.

On November 21, 1985, the SLMA sent you a final demand letter to remit payment in full or your account would be filed as a default claim. You did not make any payments, nor did you respond.

Due to your failure to make payments, the SLMA filed an insurance claim with the Department of Health and Human Services (HHS). The amount due was \$8,989.00. The lender's claim was paid on July 31, 1986, and an assignment of the note was received.

By letter dated July 29, 1986, you were notified that the previous holder of your HEAL placed you in default and assigned your notes to the United States Government. You were informed that your student loans were consolidated using the lowest interest rate allowable by law. Enclosed were instructions for entering into a repayment agreement (RA) with notice that it must be completed and returned within thirty (30) days.

You responded by letter dated August 12, 1986, and proposed a payment schedule starting October 1, 1986, of \$150.00 per month for the first year, and \$250.00 for the second year.

PAGE 2 - CERTIFICATE OF INDEBTEDNESS - CURTIS E. DIEDRICH, DC

On September 5, 1986, you were sent a repayment schedule which set forth the payment schedule you proposed.

In a letter dated September 12, 1988, you were notified that the principal amount of your debt would be referred to the Internal Revenue Service (IRS) for offset of any tax refund to which you might be entitled unless payment in full was received.

By letter dated January 23, 1990, you were notified that the previous holder of your HEAL placed you in default and assigned your notes to the United States Government. You were informed that your student loans were consolidated using the lowest interest rate allowable by law. Enclosed were instructions for entering into an RA with notice that it must be completed and returned within thirty (30) days.

In a letter dated September 21, 1990, you were sent instructions for entering into an RA with notice that it must be completed and returned within thirty (30) days. You were informed that failure to respond would result in your debt being referred to the U.S. Department of Justice (DOJ). You did not respond.

In a letter dated September 27, 1990, you were notified that the principal amount of your debt would be referred to the IRS for offset of any tax refund to which you might be entitled unless payment in full was received.

By letter dated June 20, 1991, you were notified that your account had been referred to Payco American Corporation for collection. You were advised that your account would be referred to the DOJ if you failed to either remit payment in full or enter into an RA. You did not comply.

In a letter dated August 22, 1991, you were notified that the principal amount of your debt would be referred to the IRS for offset of any tax refund to which you might be entitled unless payment in full was received.

On March 25, 1992, in the United States Bankruptcy Court, Northern District of California, you filed a petition for relief under Title 11 U.S.C. Chapter 13 (Case No. 92-42169JP). The bankruptcy was terminated on November 15, 1996, however, your HEAL debt was not dischargeable under bankruptcy.

The following provides a breakdown of payments applied to your account:

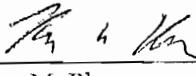
Payments to HHS	11/24/86 and 11/02/99	\$250.00
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Repeated attempts by HHS have been unsuccessful in establishing an acceptable repayment schedule for your debt. Because of your lack of cooperation the federal government is exercising its option and declaring your note due and payable. Accordingly, your debt has now been referred to the DOJ for enforced collection.

The amount due should be remitted by check, draft or money order(s) payable to the "U.S. Department of Justice" and mailed directly to the United States Attorney, Northern District of California, 450 Golden Gate Ave, 10th Fl, San Francisco, CA 94102.

**CERTIFICATION:** Pursuant to 28 U.S.C. 1746, I certify under penalty of perjury that the foregoing is true and correct.

DEC 28 2009  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Barry M. Blum  
Chief, Referral Control Section  
Debt Management Branch

# **EXHIBIT B**

1 JOSEPH P. RUSSONIELLO (CSBN 44332)  
United States Attorney

2 JOANN M. SWANSON (CSBN 88143)  
3 Chief, Civil Division

4 STEPHEN L. JOHNSON (CSBN 145771)  
5 Assistant United States Attorney

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stephen.johnson1@usdoj.gov

8 Attorneys for Plaintiff United States of America

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA, ) No. CV10-1923 SLM

14 Plaintiff, )

15 v. )

16 CURTIS E. DIEDRICH, ) CONSENT JUDGMENT

17 Defendant. )

19  
20 Judgment in favor of the United States is hereby entered in accordance with the terms of  
21 the Stipulation for Entry of Consent Judgment.

22 Judgment in the amount of \$26,530.76 (consisting of current principal of \$15,252.28,  
23 interest through December 17, 2009 of \$10,943.20, and interest from December 18, 2009 to June  
24 9, 2010 (a total of 173 days at \$1.36/day of \$235.28), is hereby ordered.

25 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

27 DATED: \_\_\_\_\_

28 UNITED STATES DISTRICT JUDGE

CONSENT JUDGMENT  
CV 10-1923 SLM

# **EXHIBIT C**



## Don't Have Internet?

### We can help!

We can set you up for recurring payments. Please fill out the Pay.Gov ACH Authorization Request form on the left.

## Pay.Gov ACH Authorization Request (Mail this portion)

Name: \_\_\_\_\_

Social Security Number (Last 4 #'s required): \_\_\_\_\_

DOJ CDCS Number: \_\_\_\_\_

Email Address (if you'd like a confirmation email): \_\_\_\_\_

I authorize my bank to automatically deduct my federal debt payment for \$ weekly [ ] monthly [ ] bi-weekly [ ] monthly on day of each month from my checking or savings account. I agree that I may be charged a Returned Item Fee if the funds are not available at the time of the scheduled Payment Due Date. By submitting this form, I agree to the terms and conditions stated on it, and that the information provided is true and correct.

I understand that I must make regular monthly payments until I am notified that my authorization form has been approved. If at any time I decide to discontinue Pay.Gov ACH, I will provide at least 30 days written notice, faxed to the NCIF at 202-532-4383, or mailed to the address below.

Account Type:

Personal Checking       Personal Savings  
 Business Checking       Business Savings

Bank Name: \_\_\_\_\_

Account Holder's Name: \_\_\_\_\_

Bank Routing # (first 9 digits on bottom of your check): \_\_\_\_\_

Checking/Savings Account #: \_\_\_\_\_

Account Holder's Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

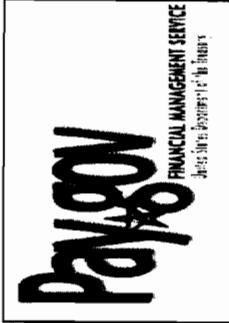
Return this form and voided check or savings account deposit slip to:  
U. S. Department of Justice  
Nationwide Central Intake Facility

Attn: Pay.Gov Processing  
P. O. Box 65720  
Washington, DC 20035  
Fax: 202-532-4383

**If you have any questions about accessing Pay.gov, please, contact your local collection office.**

**On-line  
Payment services  
using  
Pay.Gov**

Phone: 800-683-6567  
Fax: 202-532-4383  
E-mail: NCIF@usdoj.gov



Just like Pay.gov!  
Financial Management Service

## How to set up Recurring Payments?

If you would like to set up recurring payments through Pay.Gov, please do the following:

1. Go to <http://www.pay.gov>
2. In the middle of the page you should see:
  - Should I register?
  - Will you use Pay.Gov often?
  - Do you want to save your Profile?
  - Do you track your payments or set up recurring payments?
3. Click [Here to Register](#)
4. Once you are registered, go back to [Pay.Gov](#) website and log in.
5. You need to go to the "DOJ DAOG/CDCS" form and fill out the first page just like you were making a non-recurring payment and put in the recurring payment amount and click to "Submit the form button."
6. The next screen is where you enter your bank information and select how much you want to pay, how often (weekly, bi-weekly, monthly, quarterly), and date when you want the recurring payments to come out of your bank account. You must enter the number of payments you want to make. For example, if you enter 10 payments, Pay.Gov will automatically take the next 10 payments and then stop taking payments after the 10<sup>th</sup> payment.

**Bank Debit Transactions:** Debit payments are processed the next business day; as long as the transaction is entered before 8:00 p.m. Eastern Standard Time. Transactions entered after 8:00 p.m. Eastern Standard Time may take two business days to process. Processing follows the Federal Reserve holiday schedule. See that schedule at:

<http://www.federalreserve.gov/aboutthefederalreserve.gov/aboutthefederalreserve.gov/k8.htm>

## How Do I pay ON-LINE?

**Step 1:** Obtain your DOJ CDCS number from your statement or contact your collection office. This number will begin with a year, a letter (normally A) and then 5 more numbers, i.e., 2009A00000.

**Step 2:** Log on to the Internet and type <https://www.pay.gov> into your browser's location bar, and hit "enter" to access the Pay.gov web page.

**Step 3:** From the home page, go to [Search Public Forms](#) and enter form name of DOJ DAOG/CDCS

or click on the Department of Justice under Frequently Used Forms on the left side of the screen.

## How Does it Work?

**Credit Card Payments:** Pay.gov provides real-time authorization for all credit card payments. However, payments will generally be processed the next business day. Credit card limit is \$99,999.99.

## What is Pay.Gov?

Pay.gov is a secure Government website that allows you to submit payments for your federal debt(s) electronically. Pay.gov is managed by the Department of Treasury, Financial Management Service.

## Benefits ?

No more paper. No mail delay. Submit your payments on-line. Make a payment anytime and anywhere with Internet access. The Pay.gov site is available 24 hours a day, 7 days a week (holidays included) for users to submit payments.

## Ways to Pay your debt?

- **Credit Card.** pay one payment at a time. We accept Visa, Master Card, Discover, American Express, Diner's Club and payments using a debit card.
- **Checking or Savings account:** pay either one payment at a time or register online to schedule recurring payments (see instructions to the right), or
- Request that we set up and schedule your recurring payments by filling out the authorization request form in this brochure.